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**APR 27 2005**

**OFFICE OF PETITIONS**

In re Application  
Straub, et al. : DECISION ON APPLICATION  
Application No. 09/694,136 : FOR  
Filed: October 23, 2000 : PATENT TERM ADJUSTMENT  
Attorney Docket No. 20003 : AND PETITION FOR  
: RECOVERY OF FEES

This is a decision on the "PETITION FOR RECOVERY OF FEES & RESETTING OF PATENT TERM ADJUSTMENT," filed March 27, 2003.

The application for patent term adjustment under § 1.705(b) is **DISMISSED AS UNTIMELY FILED.**

Pursuant to 37 C.F.R. § 1.705(b), an application for patent term adjustment may not be filed earlier than the date of mailing of the Notice of Allowance. As no Notice of Allowance has yet been mailed in the instant application, the issue is not ripe at this time.

Furthermore, applicants, through their agent of record, have requested that the fee for the RCE filed on February 21, 2003 be waived.

It is the applicant's responsibility to take the necessary action in an application under a final Office action to provide a complete reply under 37 C.F.R. § 1.113. An applicant should not permit the maximum extendable statutory period for reply to a

final Office action to expire while awaiting a Notice of Allowance or other action.<sup>1</sup>

An applicant may not rely upon late receipt of an advisory action to establish that the delay was unavoidable. 37 C.F.R. §§ 1.116 and 1.135(b) are manifest that proceedings concerning an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal. An applicant should not wait to take action until receipt of an advisory action which might not even be mailed until more than six months after the mailing of the final Office action.

Accordingly, the petition for recovery of fees is DISMISSED.

The application file is being forwarded to Group Art Unit for examination of the Appeal Brief filed July 26, 2004.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (703) 305-0272.

*Kary Afer*

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Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

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1. See MPEP 711.03(c)(III)(C)(2).